

SENATE BILL 7039

By Oliver

AN ACT to amend Tennessee Code Annotated, Title 8;
Title 33; Title 56 and Title 71, relative to coverage
of mental health services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as the "Mental Health Parity Act."

SECTION 2. Tennessee Code Annotated, Title 56, Chapter 7, Part 23, is amended by
adding the following as a new section:

(a) As used in this section:

(1) "Addictive disease" means a chronic, often relapsing, brain disease that causes compulsive alcohol or drug seeking and use despite harmful consequences to the individual who is addicted and to those around the individual;

(2) "Generally accepted standards of mental health or substance use disorder care" means evidence-based independent standards of care and clinical practice that are generally recognized by healthcare providers practicing in relevant clinical specialties such as psychiatry, psychology, clinical sociology, addiction medicine and counseling, and behavioral health treatment. Valid, evidence-based sources reflecting generally accepted standards of mental health or substance use disorder care may include peer reviewed scientific studies and medical literature, consensus guidelines and recommendations of nonprofit healthcare provider professional associations and specialty societies, and nationally recognized clinical practice guidelines, including, but not limited to, patient placement criteria and clinical practice guidelines; guidelines or

recommendations of federal government agencies; and drug labeling approved by the United States food and drug administration;

(3) "Medically necessary" means, with respect to the treatment of a mental health or substance use disorder, a service or product addressing the specific needs of that patient for the purpose of screening, preventing, diagnosing, managing, or treating an illness, injury, condition, or its symptoms, including minimizing the progression of an illness, injury, condition, or its symptoms, in a manner that is:

(A) In accordance with the generally accepted standards of mental health or substance use disorder care;

(B) Clinically appropriate in terms of type, frequency, extent, site, and duration; and

(C) Not primarily for the economic benefit of the insurer, purchaser, or for the convenience of the patient, treating physician, or other healthcare provider;

(4) "Mental health or substance use disorder" means a mental illness or addictive disease;

(5) "Mental illness" means a disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life;

(6) "Nonquantitative treatment limitation" or "NQTL":

(A) Means limitations that are not expressed numerically, but otherwise limit the scope or duration of benefits for treatment; and

(B) Includes, but is not limited to:

(i) Medical management standards limiting or excluding benefits based on whether the treatment is medically necessary or whether the treatment is experimental or investigative;

(ii) Formulary design for prescription drugs;

(iii) Standards for provider admission to participate in a network, including average time to obtain, verify, and assess the qualifications of a healthcare practitioner for purposes of credentialing;

(iv) Criteria utilized for determining usual, customary, and reasonable charges for out-of-network services, including the threshold percentile utilized and any industry software or other billing, charges, and claims tools utilized;

(v) Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for in-network and out-of-network services;

(vi) Standards for providing access to out-of-network providers;

(vii) Provider reimbursement rates, including rates of reimbursement for mental health or substance use services in primary care; provided, however, that proprietary information collected is not subject to disclosure; and

(viii) Such other limitation identified by the commissioner;

(7) "State healthcare entity" means an entity that provides or arranges health care on a prepaid, capitated, or fee for service basis to enrollees or recipients of the state health plan, the TennCare program, or CoverKids program,

including any insurer, managed care organization, administrative services organization, utilization management organization, or other entity; and

(8) "State health plan" means the state insurance plan set out in title 8, chapter 27.

(b) Every state healthcare entity shall provide coverage for the treatment of mental health or substance use disorders in accordance with the federal Mental Health Parity and Addiction Equity Act of 2008 (42 U.S.C. § 300gg-26), and its implementing and related regulations, which must be at least as extensive and provide at least the same degree of coverage as that provided by the entity for the treatment of other types of physical illnesses. Such coverage must also cover the spouse and the dependents of the insured if the insured's spouse and dependents are covered under the benefit plan, policy, or contract. The coverage must not contain any exclusions, reductions, or other limitations as to coverages, deductibles, or coinsurance provisions which apply to the treatment of mental health or substance use disorders unless such provisions apply generally to other similar benefits provided or paid for under the state health plan.

(c) Every state healthcare entity shall:

(1) Provide coverage as described in subsection (b) for children, adolescents, and adults;

(2) Apply the definitions of generally accepted standards of mental health or substance use disorder care, medically necessary, and mental health or substance use disorder in making any medical necessity, prior authorization, or utilization review determinations under such coverage;

(3) Ensure that any subcontractor or affiliate responsible for management of mental health and substance use disorder care on behalf of the state healthcare entity complies with this section;

(4) Process hospital claims for emergency healthcare services for mental health or substance use disorders in accordance with this section regardless of whether a member is treated in an emergency department; and

(5) No later than January 1, 2024, and annually thereafter, submit a report to the commissioner of commerce and insurance that contains the comparative analysis and other information required of insurers under the federal Mental Health Parity and Addiction Equity Act of 2008 (42 U.S.C. § 300gg-26(a)(8)(A)) and which delineates the comparative analysis and written processes and strategies used to apply benefits for children, adolescents, and adults.

(d) No later than January 1, 2025, and annually thereafter, the commissioner of commerce and insurance shall publish on the department's website in a prominent location the reports submitted to the commissioner pursuant to subdivision (c)(5).

SECTION 3. The department of commerce and insurance is authorized to promulgate rules to effectuate this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 4. This act takes effect October 1, 2023, the public welfare requiring it, and applies to policies entered into, amended, or renewed on or after that date.